

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR JULY 2, 2020 AT 8:30 A.M.**

These are the tentative rulings for the **THURSDAY, JULY 2, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, JULY 1, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)

More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

1. M-CV-0068564 WELLS FARGO v. BOYD, SHAWN

Plaintiff's unopposed motion to deem requests for admissions as admitted is granted. The matters encompassed in request for admissions, set one, are deemed admitted as to defendant Michelle Boyd.

2. S-CV-0034586 EPIC HR v. ALVES, STEVEN

The motion for summary judgment is continued to Thursday, July 16, 2020 at 8:30 a.m. in Department 42.

3. S-CV-0038650 CLARK, JASON v. SHELBORNE HOA

The motion for arbitration is dropped from the calendar as no moving papers were filed with the court.

///

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR JULY 2, 2020 AT 8:30 A.M.

4. S-CV-0042166 SWEARINGEN, MATTHEW v. SIERRA PAC HOME

The motion for leave to file a first amended complaint is dropped from the calendar as no moving papers were filed with the court.

5. S-CV-0042298 CLEAR ADVANTAGE v. RESULTS ONLY CONSULTING

Defendants Results Only Consulting & Advertising, LLC; Matthew Neal; and Patrick Cardenas' (Result Only Defendants') Motion for Terminating Sanctions, Evidentiary Sanction, Motion to Compel Discovery Responses, and Monetary Sanctions

The motion is granted in part. Initially, the request for terminating sanctions is denied. The purpose of discovery sanctions is to prevent abuse of the discovery process and correct problems presented. (*Do v. Superior Court* (2003) 109 Cal.App.4th 1210, 1213-1214.) It is not a weapon to provide for punishment, forfeiture, or avoidance of trial on the merits. (*Ibid.*) The imposition of terminating sanctions is generally limited to extreme cases of discovery misuses that are so pervasive a less drastic sanction will not sufficiently address the discovery derelictions. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796-797.) In light of the extreme effect of terminating sanctions, courts do not impose such a sanction lightly. The totality of the circumstances surrounding the discovery violations are considered when ordering terminating sanctions: (1) whether the party's conduct was willful; (2) the detriment to the propounding party; and (3) the number of formal and informal attempts to obtain discovery. (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 390.) The court has carefully reviewed the entire court file along with the current briefing. The moving defendants have not sufficiently demonstrated any violation of a discovery order or that a lesser sanction could not be as effective.

The request for evidentiary sanctions is also denied since defendants did not provide a separate statement with their request. (California Rules of Court, Rule 3.1345(a)(7).

This leaves the request to compel discovery responses and monetary sanctions. Defendants' request to compel responses to written discovery, deem the requests for admission as admitted, and request for monetary sanctions is granted. Plaintiff shall provide verified responses and responsive documents to form interrogatories, set one; special interrogatories, set one; and request for production of documents, set one, by July 24, 2020. The matter encompassed

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR JULY 2, 2020 AT 8:30 A.M.

in request for admissions, set one, are deemed admitted. Sanctions in the amount of \$950 are imposed on plaintiff Clear Advantage Direct Mail, Inc. (Code of Civil Procedure section 2033.280(c).)

6. S-CV-0042978 K.H. MOSS CO. v. HADDAD, MAHER

Plaintiff K.H. Moss Company's Motion for Summary Judgment

Ruling on Request for Judicial Notice

Plaintiff's request for judicial notice is granted under Evidence Code section 452.

Ruling on Objections

Plaintiff's objections nos. 1-5 to the Haddad declaration are sustained. Plaintiff's objections nos. 6-9 to the Resovich declaration are sustained. Additionally, the court declines to consider the Resovich declaration as it is not made under penalty of perjury in compliance with Code of Civil Procedure section 2015.5.

Ruling on Motion

The motion is granted. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (Code of Civil Procedure section 437c(c).) The moving party bears the initial burden of establishing every element of the cause of action. (Id. at 437c(p)(1).) Only when this initial burden is met does the burden shift to the opposing party to establish a triable issue of material fact. (Ibid.) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The court reviews the motion keeping these principles in mind.

Plaintiff has met its initial burden here. Plaintiff submits evidence establishing the parties entered into various lease amendments that allowed defendant to, among other things, (1) assign his lease; (2) extend his lease to 2022; (3) waive an outstanding \$42,977.10 owed to plaintiff so long as defendant did not default

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR JULY 2, 2020 AT 8:30 A.M.

further on the lease; and (4) defendant would remain responsible for rent under the assignment agreement. (Defendant's SSUMF nos. 1-5, 7-15, 17.) Plaintiff served defendant with a notice of default due to the subtenant's failure to pay rent followed by a 3-day notice to quit. (Plaintiff's SSUMF nos. 18, 20.) An unlawful detainer judgment was entered against defendant and the subtenant on September 12, 2018. (Id. at no. 21 and evidence cited therein.) Plaintiff suffered damages of \$202,644.62 related to the breach of the lease along with the outstanding \$42,977.10 for damages totaling \$245,621.72. (Id. at nos. 10, 19, 22.) This evidence is sufficient for plaintiff to meet its initial burden, shifting the burden to defendant to establish a triable issue of material fact.

Defendant, however, fails to meet his burden. Defendant has not submitted admissible evidence establishing a triable issue of material fact. To the contrary, defendant does not dispute the parties entered into various lease amendments. (Defendant's SSUMF nos. 1-5, 7-15, 17.) This includes defendant's acknowledgement in the first lease amendment that he owed an outstanding \$42,977.10 in back rent, which he did not pay after the subtenant defaulted on the lease. (Id. at nos. 10, 19.) Defendant also does not dispute a judgment was entered against him in the unlawful detainer action. (Id. at no. 21 and evidence cited therein.) Since defendant fails to raise a triable issue of material fact, the motion is granted in its entirety. Summary judgment is granted as to both the first and second causes of action in the complaint.

7. S-CV-0043000 VASQUEZ, RAQUEL v. AEROTEK

The motion to compel arbitration is continued to Thursday, July 23, 2020 at 8:30 a.m. in Department 42.

8. S-CV-0043166 SOLE, CECILIA v. HIDALGO, GABRIEL

Aubriana Cantrell's Expedited Minor's Compromise Petition

The petition is granted. After careful consideration of the petition and supporting attachments, the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.

///

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR JULY 2, 2020 AT 8:30 A.M.

Natalie Cantrell's Expedited Minor's Compromise Petition

The petition is granted. After careful consideration of the petition and supporting attachments, the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.

9. S-CV-0043624 OSTRANDER, MICHAEL v. PAULSEN, ROBERT

The demurrer and motion to strike are dropped from the calendar. A notice of dismissal was entered April 28, 2020.

10. S-CV-0043720 FORWARD FINANCING v. SOLAR ENERGY DESIGNS

The unopposed petition to confirm arbitration award is granted as prayed. Judgment in the amount of \$26,007.50 is entered against respondents Solar Energy Designs, Inc. and Michael Kaholokula.

11. S-CV-0043816 MY SECURE ADVANTAGE v. U.S. LEGAL SERVICES

The two motions to compel further responses to request for production of documents are continued to Thursday, July 23, 2020 at 8:30 a.m. in Department 42.

12. S-CV-0043926 RICK MARTIN CONST. v. IRA SERVICES TRUST

The motion to expunge lis pendens is continued to Thursday, August 6, 2020 at 8:30 a.m. in Department 42

. The court notes it still has not received plaintiff's opposition to the motion to expunge lis pendens.

13. S-CV-0044552 PANTOJA, MANUEL v. NAVARRETE, DORA
S-PR-0009529 IRPO PANTOJA FAM LIVING TRUST

Petitioner Manuel Pantoja's motion for consolidation is granted. The probate matter Pantoja Family Trust, SPR-9529, and the civil matter Manuel Pantoja v. Dora Navarrate, SCV-44552, shall be consolidated for all purposes including

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR JULY 2, 2020 AT 8:30 A.M.

trial. The probate case shall be the lead case with all future filings to be filed under SPR-9529. The case management conference set for July 7, 2020 is vacated. The trial setting status hearing set for August 28, 2020 shall remain as set.

The request to continue trial dates is denied as moot as the trial date was previously vacated.

14. S-CV-0044994 IRMO SEALED NAME CHANGE M.D.

The petition for name change is dropped from the calendar as the relief was granted on June 25, 2020.

15. S-CV-0044996 IRMO SEALED NAME CHANGE S.D.

The petition for name change is dropped from the calendar as the relief was granted on June 25, 2020.